

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.26.697 and the adoption of) PROPOSED AMENDMENT AND
New Rule I pertaining to the stay of) ADOPTION
an informal investigation)

TO: All Concerned Persons

1. On December 6, 2013, at 1:00 p.m., the Board of Personnel Appeals (board) will hold a public hearing in the auditorium of the DPHHS Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Labor and Industry no later than 5:00 p.m. on December 3, 2013, to advise us of the nature of the accommodation that you need. Please contact Jordon Dyrdaahl-Roberts, Department of Labor and Industry, PO Box 1728, Helena, Montana, 59624; telephone (406) 444-4493; fax (406) 444-1394; TDD/Montana Relay Service (406) 444-5549; or e-mail jordonroberts@mt.gov.

3. The rule as proposed to be amended provides as follows:

24.26.697 FACT FINDER (1) Either party to a dispute may petition the board to initiate ~~fact finding~~ factfinding or, if it is apparent that matters in disagreement might be more readily settled if facts involved were determined and publicly known, the board may initiate ~~fact finding~~ factfinding in accordance with ~~section~~ 39-31-308, MCA.

(2) Within three days of receipt of a petition for ~~fact finding~~ factfinding, the board shall submit a list of five qualified, disinterested persons to each of the parties to the dispute.

(3) through (7) remain the same.

(8) ~~The cost of fact finding proceedings must be equally borne by the board and the parties concerned.~~ When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties concerned. The fact finder shall, within ten working days of the written findings, submit an invoice of the costs and fees to the board which shall send copies of the invoice to both parties on which they will be billed for one-third of the total. The parties shall pay the board within five days and the board shall forward the total amount to the fact finder.

AUTH: 39-31-104, MCA

IMP: 39-31-309, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to correct substantive and spelling discrepancies between 39-31-309, MCA, and ARM 24.26.697. The board recently became aware that ARM 24.26.697 misstates the cost-sharing burden set forth in 39-31-309, MCA, and determined that an amendment is necessary to rectify the discrepancy.

4. The rule as proposed to be adopted provides as follows:

NEW RULE I STAY OF INFORMAL INVESTIGATION (1) If during the course of the informal investigation of the unfair labor practice charge, the board's agent determines that the charge is one that may be resolved through deferral to the final and binding arbitration provisions contained in the collective bargaining agreement between the parties, the board's agent may issue a recommended order staying the board's proceedings.

(2) A party may appeal the recommended order to stay proceedings by filing an appeal with the board within 14 days after service of the recommended order.

(3) An appeal of the recommended order to stay proceedings must clearly set forth the specific factual or legal reasons indicating error. At the discretion of the board, interested parties will be afforded an opportunity to respond to an appeal of the recommended order.

(4) The board or the board's agent has the discretion to dissolve the stay and continue with its investigation into the unfair labor practice if a party makes a proper showing that:

(a) the unfair labor practice charge has not been resolved in a reasonable amount of time;

(b) the arbitration decision has not resolved the unfair labor practice; or

(c) the decision to stay the proceedings was inconsistent with the laws that govern collective bargaining in Montana.

(5) A decision by the board or the board's agent to dissolve a stay is not appealable.

(6) If the board affirms and adopts the recommended order to stay proceedings, the stay remains in place until there is a subsequent request to review the stay or the board's order affirming and adopting the recommended order is removed by operation of court order.

AUTH: 39-31-104, MCA

IMP: 39-31-405, MCA

REASON: The board believes there is reasonable necessity to adopt this rule in order to reduce the administrative burden on the agency and further the goal of collective bargaining, as intended by Title 39, Chapter 31, MCA. Parties before the board have recently encouraged the adoption of a rule similar to the federal rule allowing the stay of an investigation when an unfair labor practice charge may be resolved through arbitration. Allowing for the stay of an investigation will provide

disputing parties additional time to resolve the issue raised in the complaint without being constrained by the proceedings of an administrative investigation.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Pam McDaniel, Department of Labor of Industry, PO Box 201503, Helena, Montana, 59620; telephone (406) 444-1376; fax (406) 444-7071; or e-mail pmcdaniel@mt.gov, and must be received no later than 5:00 p.m., December 13, 2013.

6. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

7. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department, on behalf of the board, has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses as the rules relate only to public sector employees.

BOARD OF PERSONNEL APPEALS
ANNE L. MACINTYRE, CHAIRPERSON

/s/ Mark Cadwallader

Mark Cadwallader
Rule Reviewer

/s/ Pam Bucy

Pam Bucy
Commissioner
Department of Labor and Industry

Certified to the Secretary of State November 4, 2013.